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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1945

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No. 87

A. R. TUCKER, *Appellant*

v.

THE STATE OF TEXAS, *Appellee*

APPEAL FROM THE COUNTY COURT OF
MEDINA COUNTY, TEXAS

HAYDEN C. COVINGTON TOM S. WILLIAMS
Counsel for Appellant

■

No. 114

GRACE MARSH, *Appellant*

v.

THE STATE OF ALABAMA, *Appellee*

APPEAL FROM THE COURT OF APPEALS OF
THE STATE OF ALABAMA

HAYDEN C. COVINGTON GROVER C. POWELL
Counsel for Appellant

■

JOINT BRIEF FOR APPELLANTS

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1945

■

No. 87

A. R. TUCKER, *Appellant*

v.

THE STATE OF TEXAS, *Appellee*

APPEAL FROM THE COUNTY COURT OF
MEDINA COUNTY, TEXAS

■

Jurisdiction

Jurisdiction of the Supreme Court of the United States is invoked under Section 237 (a) of the Judicial Code or 28 U. S. C. 344 (a).

Under the Act of Congress of January 31, 1928, Chapter 14, 45 Stat. 54, and under the Act of Congress of April 26, 1928, Chapter 440, 45 Stat. 466, an appeal may be taken in any case which under prior statute could be received as a matter of right on writ of error.

Judgment of conviction was entered January 29, 1945. [1-2] * Appellant's motion for new trial was overruled on March 5, 1945. [5] On April 17, 1945, the papers upon appeal to this court were duly filed in the court below. [30-38] The order allowing appeal was entered April 17, 1945. [35]

Opinion

No opinion was rendered by the court below. The judgment of conviction constitutes the decision of the court. [1-2]

* Bracketed figures in this brief refer to pages of the records of the respective cases.

Statutes and Regulation Involved

The legislation the constitutionality and validity of which is here drawn in question is Article 479, Chapter 3 of the Texas Penal Code, which provides:

"Any peddler or hawker of goods or merchandise who enters upon premises owned or leased by another and wilfully refuses to leave said premises after having been notified by the owner or possessor of said premises, or his agent, to leave the same, shall be fined not less than one nor more than twenty-five dollars."

Also drawn in question are Sections 1547 and 1548 of Title 42 of the United States Code (54 Stat. 1128, 55 Stat. 363). These statutes empower the Administrator of the Federal Public Housing Authority to "establish reasonable standards of safety and health" in Defense Housing Projects and deny him the power to infringe on civil liberties. Pursuant to authority vested by these provisions of the laws of the United States, a rule was promulgated by the Federal officials for the Hondo Navigation Village prohibiting peddlers, solicitors and hawkers from plying their trade within the limits of said Village without the permission of the manager of the Village. It was wrongly applied so as to deny civil liberties contrary to the First and Fourteenth Amendments to the Federal Constitution.

Constitutional Provisions Involved

The First Amendment to the Federal Constitution guaranteeing freedom of speech, press and worship, and the Fourteenth Amendment securing due process of law and the rights guaranteed by the First Amendment are here involved.

How Statutes and Regulation Construed Below

Article 479, Chapter 3, of the Texas Penal Code was construed so as to furnish criminal sanctions for violation of the rule of the Hondo Navigation Village prohibiting peddling, soliciting, and hawking within the limits of said Village without the prior permission of the housing manager. The code provision was not restricted so as to give protection to individual householders troubled by peddlers, hawkers and solicitors who refused to leave when ordered so to do, but was broadly construed so as to enable the manager of the Village to absolutely prohibit appellant from calling at any of the homes within said Village, without his prior permission.

The court below held that the statutes were valid and constitutional and that they did not abridge appellant's rights of free speech, free press and his freedom to worship ALMIGHTY GOD. That court sustained the application of the statutes to appellant and decided in favor of the validity of same under the Federal Constitution and held that they were constitutional on their face and as construed and applied.

Questions Presented

1. Does the representative of the landlord of the Defense Housing Project, known as Hondo Navigation Village, have the power to censor and prohibit evangelistic preaching activity from door to door in the project?

2. Does the conviction of appellant under the Texas trespass statute, because he did not have a permit and refused to leave the Village when ordered by the manager, deprive him of his freedoms of speech and press and to worship ALMIGHTY GOD, contrary to the First and Fourteenth Amendments to the United States Constitution?

Form of Action and History

A complaint was filed in the Justice Court of Medina County, Texas, charging that appellant, being a peddler of merchandise, "did then and there unlawfully and wilfully refuse to leave said premises after having been notified by the said A. B. Purinton, the owner of same" to leave. [1] He was convicted and duly appealed to the County Court of Medina County. [5-6] On trial *de novo* before the County Court of Medina County on January 29, 1945, he was again adjudged guilty and committed. [1-2]

FACTS

The Hondo Navigation Village is located near Hondo in Medina County, Texas. [17] The Federal Public Housing Authority of the National Housing Agency operates the Village. [9] Situated in the Village are numerous housing units. [7] There are several streets in the Village. [14-15]

In charge of the Hondo Navigation Village is A. B. Purinton, known as the housing manager. His duties are to rent the houses, supervise the management of the Village and enforce the regulations of the Federal Public Housing Authority applicable to the project. [7] One of the general regulations promulgated by the Agency, which he was required to enforce, prohibits soliciting, peddling and hawking of any kind from door to door within the Village without permission of the manager. [7, 10, 12-13] Appellant, Arthur Tucker, is an ordained minister of the gospel, one of Jehovah's witnesses, engaged in preaching as a missionary evangelist from door to door. [19, 20, 21, 24, 28] He was ordained in June 1940. [21] At this time he dedicated and consecrated his entire life to serve Almighty God as His missionary evangelist. [21] He has received special training for missionary evangelistic work at the Watchtower Bible College of Gilead in New York State. [22, 30]

He was transferred from Michigan to Texas to continue the pursuit of his missionary evangelistic activity in August

1943. [20] In due course he was assigned to Hondo, Texas. [20] His missionary field at this place included the Hondo Navigation Village. [20, 22] In the latter part of September 1944, he began his missionary work by calling from door to door in the Village. [22] He called on the manager of the Village and informed Purinton that he was a minister, calling from door to door, explaining to persons willing to listen to him the full nature of his good work, offering to the people literature and Bible helps for the purpose of assisting them in systematically studying the Scriptures concerning the establishment of God's Kingdom. [13-14; 22-23] The manager informed Tucker that he could not go from door to door in Hondo Navigation Village. [14, 23] Tucker left but returned to the Village two or three days later. [14] When the manager found out that Tucker was going from door to door he sent someone to tell Tucker to quit preaching. [14-15] Tucker did not stop. [15] On a later date Tucker returned to the Village. While calling from house to house he came upon the home occupied by the manager, Mr. Purinton. [15] Although he had previously learned that Purinton was not interested, he did not know that the house was occupied by the manager of the project. [23-24] Then Purinton told him that he would have to leave the Village and never return. [15, 24] Before appellant left, Purinton asked him for a booklet, for which he contributed five cents. [15, 24] Purinton did not obtain the booklet in good faith for the purpose of reading, but solely for the purpose of obtaining evidence. [15, 24] Appellant did not refuse to leave Purinton's home [16] but left as soon as he was told to. [16, 24] Appellant did not refuse to leave any house when requested to do so. There was no complaint that he trespassed at any persons' homes after being informed that they were not interested. [16, 23]

D. C. Williams, a deputy sheriff, came to the Village at the request of Manager Purinton. [18] The deputy was requested to ask appellant to leave the Village and not go from door to door. He did. Appellant refused to leave. [18]

Then the deputy returned with a warrant for his arrest. With Purinton he talked to appellant again requesting him to leave. Appellant informed him that he had as much right as anyone else to remain there in the Village. [18] He refused to leave the Village. [24] At no time did he create a disturbance. [25] He did not refuse to leave the home of any tenant after being requested to leave. [25] He stated that the reason he did not leave the Village was that he, as a minister, was "always guided by the scriptures which commands work to be done, not in obedience to man, but in obedience to Almighty God. This good gospel of the kingdom must be preached to all creatures possible and it is left up to the creature to decide and Almighty God what he wishes to do about it. Therefore, in any locality where there are people residing they have the right to accept or reject visitors at their homes. Some hear this good message that I preach because the Lord is now dividing the people as sheep from goats and it is necessary that the person hear the message of the gospel in order to place himself in one group or the other. . . . I was preaching to the people of good-will who cared to hear; I was delivering to them the message without charge concerning the establishment of the kingdom of God and inquiring of their interest so that I might call again some other day and sit down with them in their homes and discuss the scriptures and invite them to study the Bible systematically." [25-26]

HOW ISSUES RAISED

At the close of the State's case appellant filed and urged his motion to dismiss. [2-3, 19] At the close of all the evidence appellant urged his second motion to dismiss. [3-4, 29] In this motion he asserted that he was an ordained minister of Jehovah God, that the undisputed evidence showed that at the time in question he was engaged in preaching the gospel of God's Kingdom and that if the statutes were construed and applied so as to permit a conviction they would unlawfully abridge and deny his right

of "worship, speech and press, contrary to the First and Fourteenth Amendments to the United States Constitution." [3-4, 29] The motion was overruled, to which exception was allowed. [4, 29] In the motion for new trial appellant duly complained of the action of the court below in overruling his second motion for dismissal and for judgment. He also complained that the judgment of conviction was contrary to the law and evidence. [4-5] This motion was overruled with exception to appellant. [5]

Specifications of Error

1. The court below erred in overruling appellant's second motion to dismiss. [3-4, 29]

2. The court below erred in overruling appellant's first amended motion for new trial. [4-5]

[Points for JOINT ARGUMENT of *Tucker* and *Marsh* cases appear at pages 20-21, infra.]

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1945

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No. 114

GRACE MARSH, *Appellant*

v.

THE STATE OF ALABAMA, *Appellee*

APPEAL FROM THE COURT OF APPEALS OF THE STATE OF ALABAMA

■

Jurisdiction

Jurisdiction of the Supreme Court of the United States is invoked under Section 237 (a) of the Judicial Code or 28 U. S. C. 344 (a).

Under the Act of Congress of January 31, 1928, Chapter 14, 45 Stat. 54, and under the Act of Congress of April 26, 1928, Chapter 440, 45 Stat. 466, an appeal may be taken in any case which under prior statute could be received as a matter of right on writ of error.

The papers upon appeal to this court were duly filed in the court below on May 3, 1945. [157-161] The order allowing appeal was entered on May 3, 1945. [161-163]

Opinion

The opinion of the Court of Appeals of Alabama is reported. (21 S. 2d 558) This opinion also appears in the record. [141-150] It is an appendix to the jurisdictional statement. [37-46] No opinion was filed by the Supreme Court of Alabama in its denial of certiorari. The decision denying certiorari appears in the record. [156] (21 S. 2d 564)

Statute and Regulation Involved

The legislation the constitutionality and validity of which is here drawn in question is the so-called "trespass after warning" statute * which provides:

"TRESPASS AFTER WARNING. Any person, who, without legal cause or good excuse, enters into the dwelling house or on the premises of another, after having been warned, within six months preceding, not to do so, . . . and fails or refuses, without legal cause or good excuse, to leave immediately on being ordered or requested to do so by the person in possession, his agent or representative, shall upon conviction be fined not more than one hundred dollars, and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than three months."

Also drawn in question is a rule promulgated by the Gulf Shipbuilding Corporation for the Town of Chickasaw, Alabama, which it owns, prohibiting peddlers, solicitors and hawkers from plying their trade within the limits of said town without permission of the housing manager of the town. See the record. [47, 49, 87]

Constitutional Provisions Involved

The First Amendment to the Federal Constitution guaranteeing freedom of speech, press and worship, and the Fourteenth Amendment securing due process of law and the rights guaranteed by the First Amendment are here involved.

How Statute and Regulation Construed Below

Chapter 79, Section 426 of the Alabama Code was construed by the Alabama Court of Appeals so as to furnish criminal sanctions for violation of the rule of the Gulf Shipbuilding Corporation prohibiting peddling, soliciting

* Chapter 79, Article 426 of the Alabama Code.

and hawking within the limits of Chickasaw, Alabama, without the prior permission of the housing manager. The code provision was not restricted so as to give protection to individual property owners troubled by trespassers who, having been previously warned, refused to leave when ordered so to do, but was broadly construed so as to enable the manager of the town to absolutely prohibit appellant and others similarly situated from distributing their Bible literature to persons passing along the streets and sidewalks owned by the Gulf Shipbuilding Corporation, without the prior permission of the housing manager.

The Court of Appeals of Alabama, the highest court of Alabama in which a decision was had, held that the statute was valid and constitutional and that it did not abridge appellant's rights of free speech, free press and her freedom to worship ALMIGHTY GOD according to His written commands contained in the Bible and according to appellant's conscience. That court of last resort sustained the application of the statute to appellant and decided in favor of the validity of same under the Federal Constitution and held that it was constitutional on its face and as construed and applied.

Questions Presented

1. Does the conceded use of the streets of Chickasaw for ordinary purposes give appellant the right to claim that the Town of Chickasaw and the Gulf Shipbuilding Corporation are bound by the same constitutional restrictions against infringement of civil liberties exercised on the streets as are imposed against all municipalities?

2. Does the representative of the landlord of the Gulf Shipbuilding Corporation have the power to censor and prohibit evangelistic preaching activity upon the public streets in the Town of Chickasaw, a suburb of the City of Mobile?

3. Does the conviction of appellant under the Alabama

trespass statute because she did not have a permit and refused to leave the streets of the Town when ordered by the manager of the Gulf Shipbuilding Corporation deprive her of her freedoms of speech and press and to worship ALMIGHTY GOD, contrary to the First and Fourteenth Amendments to the United States Constitution?

Form of Action and History

Complaint charging appellant with trespass was filed in the Inferior Criminal Court of Mobile County. [1] Appellant was convicted. [2] She appealed to the Circuit Court of Mobile County where she received trial *de novo*. [3-6] After her hearing in the Circuit Court of Mobile County appellant was found guilty. A judgment of conviction was entered on January 27, 1944. [8-9] Appellant duly appealed to the Court of Appeals of Alabama. [9] That court affirmed on January 9, 1945. [9] The petition for rehearing in that court was denied February 13, 1945. [153] Petition for writ of certiorari was denied by the Supreme Court of Alabama on March 29, 1945, without entering an order of affirmance. [156] (21 S. 2d 564)

FACTS

Chickasaw, Alabama, a suburb of the City of Mobile, is a town having a population of 1530.* Due to expansion of its shipbuilding industries during the war the population of the town greatly increased. [25] The town had its genesis during the first world war. [74, 80, 82] Before the town began to develop it was owned by the Tennessee Land Company. [82] In 1921 the company erected a building housing a group of stores in a portion of the town. [82-83] This portion of the town constitutes what is known as the "business block". [44-45, 57, 74] This "business block" fronts on a street 200 or 250 feet in length, running parallel with an adjacent public highway. [28, 44, 45, 82, 83] Both ends

* See 1940 United States Census.

of this street were connected with this highway so that the street formed a crescent-like detour from the main road for the convenience of shoppers in the business center. [26, 28, 46, 53, 65] The buildings were only 30 or 40 feet off the highway, and the street was separated from the pavement of the highway by only a narrow strip of dirt. [24, 28, 45, 52, 53, 83]* All the stores on the "business block" are located in one building fronting on this street. [45, 53, 74, 82, 83] A concrete sidewalk lay in front of the stores the entire length of the building. [24, 51, 52, 65, 78, 80, 86] It was there twenty-three years. [50-51] The "business block" is arranged to accommodate a barber shop, beauty parlor, laundry branch, doctor's office, commercial office, dry goods store and restaurant. [22, 23, 26, 29, 45, 68] A separate building adjacent to the main building provides quarters for a post office. [29, 45, 51, 79, 80, 83] The stores were leased out to tenants who conducted their respective businesses in the customary and usual manner for general public patronage. [53, 56, 81, 88] The post office served not only the people living on the company-owned land, but also all the surrounding area. [55, 80-81] There was no visible mark of any kind that would indicate the boundary of the company-owned property and adjoining property otherwise owned. [25, 56, 65, 76] The town was not fenced in or walled in. [29]

In 1941 the Tennessee Land Company, after running the town for twenty years, sold its property, including the "business block", to the Chickasaw Development Company, which in turn was shortly absorbed by the Gulf Shipbuilding Corporation, the present owner. [20, 32-33, 82] In December 1943, a barber shop, drug store, beauty parlor, laundry, post office, grocery store, doctor's office and commercial office were operating in the "business block" under leases from the Gulf Shipbuilding Corporation and doing business

* The distance of this "business block" from the public highway is approximately the same as the ordinary group of stores abutting a highway with their usual "drive-in" commonly seen along the major highways of the nation.

with the general public. [44-45, 82, 83] The Gulf Shipbuilding Corporation ran the town and provided the inhabitants with the usual municipal conveniences. [11, 32, 33] A sewer and water system was maintained. [40, 42] Deputy sheriffs were maintained to police and look out for the welfare of the Corporation and the people of Chickasaw. [11, 46-47, 89]

Although the present and former owners of the "business block" declared there had never been a formal and express dedication of the streets and sidewalks to public use [46, 86], they had been used in the general and ordinary manner that all public streets and sidewalks of every community are used. [24, 51, 52, 65, 68, 74, 78, 80, 86] The owners have always paid taxes on the property to which they hold title, including the streets and sidewalks. [46, 86] The corporation claimed control of sidewalks. [87; cf. 88] The implicit grant of the public easement on the streets and sidewalks was recognized by the former owner in its deed to the Gulf Shipbuilding Corporation. In that deed it was provided that the warranties did "not apply to the areas or property located in any of the streets, alleys or public roads nor to the sewer line extending between the Main Village and the East Village of Chickasaw". [42] The testimony of the law enforcement officer for the Gulf Shipbuilding Corporation and the Town of Chickasaw emphasizes the public easement upon the sidewalks and streets:

> "Q. Has that sidewalk been continuously used by the general public during all of those twelve years you have lived there? A. Yes sir.
>
> "Q. Are these the first people that have been arrested there offering a magazine or paper on the sidewalk? A. The first ones that I have arrested, yes sir.
>
> "Q. Have you known of any others to be arrested there for that? A. No sir.
>
> • • •
>
> "Q. This sidewalk is used you say by the general

public, that is similar to the use that is put to in any small town of that size, is it not? A. Yes sir, the general public use it." [24]

This was confirmed by the Tennessee Land Company's manager, William C. Myles, who went even further and agreed that while he had title to the property, he 'never stopped anybody from using it so long as they used it in an orderly and proper manner and were not on there for any gainful purpose.' [90; see also 86]

Appellant Grace Marsh since 1934 has been an ordained minister of ALMIGHTY GOD, and as such is one of Jehovah's witnesses preaching the gospel of the Kingdom of God. [61, 64, 68] The Watchtower Bible and Tract Society, under direction of which she carried forward her ministerial activities, issued to her a certificate of ordination and identification. (Defendant's Exhibit 3) [69-71] Appellant testified that Jehovah's witnesses are true followers of Christ Jesus and are dedicated to the promulgation of His teachings among the people of good will toward ALMIGHTY GOD. This is done in the apostolic manner as shown in the Scriptures. Jesus taught in the villages, calling on various people. (Mark 6:6) He went throughout every city and village, preaching and explaining the message of God's Kingdom, together with His twelve disciples. (Luke 8:1) After thus instructing by example, He directed His disciples to likewise act and preach: "Go ye into all the world, and preach the gospel to every creature." (Mark 16:15) In harmony with this directive from the Master and himself also setting an example of "instruction in righteousness", His apostle Paul reminded the Christian church that he had taught publicly and from house to house. (Acts 20:20) Appellant said that she devoted her entire life to this work. [61] In addition to orally teaching the people concerning the Kingdom of God, she used various printed publications, such as books, booklets [70-71], and magazines. [61, 62, 70] Such she distributed to "any person of good-will who desires to

read them." [62] To the end that this may be accomplished in an orderly manner, the City of Mobile and surrounding communities had been divided up by Jehovah's witnesses into territory sections, and each minister given a section to serve.

Grace Marsh and others of Jehovah's witnesses had been engaged in preaching the gospel in Chickasaw by distribution of Bible literature. [30-31, 62] It was their weekly custom to distribute the "Watchtower" and "Consolation" magazines (Defendant's Exhibits 1 and 2, respectively) upon the sidewalks in front of the "business block" on each Saturday afternoon. [64, 66] * Appellant and her companions distributed this literature while standing on the outer edge of the sidewalk near the curb of the street. As the pedestrians passed by them they displayed the magazines calling out in moderate tones, "Watchtower, announcing Jehovah's Kingdom". [61, 62, 67] The magazines were not for sale. None were sold. They were offered to anyone who desired to read and study them. The recipients of the magazines were given an opportunity to contribute a small sum to further such charitable work. If any were too poor or otherwise unable to contribute and desired the magazines they were given to such persons without any money contribution. [62, 67]

The "Watchtower" and "Consolation" magazines expound true Christianity. They contain scriptural sermons on topics of great concern to people of good-will seeking knowledge of God's purposes toward mankind. [126-140] The "Consolation" magazine augments these laudable purposes by providing uncensored news items gathered from all over the earth relevant to God's purposes to set up a government of righteousness on the earth which will bring to the people peace, prosperity, happiness and everlasting life. [94-125] This literature was used by appellant and her companions to further their preaching. [61-62] The

* Peebles, the Town manager, denied ever having seen Jehovah's witnesses distribute literature until one week before their arrest, [54]

magazines were a substitute for oral discussion upon the various vital subjects dealt with. [62, 126-140]

On December 11, 1943, appellant and a companion were on the sidewalk in front of the "business block" distributing the magazines in the manner and for the purposes above described. [15, 18, 48, 58, 62, 63, 64] While engaged in this pursuit, Deputy Sheriff Chatham, employed by the Gulf Shipbuilding Corporation, arrested appellant and her companion. They were taken to the office of the Gulf Shipbuilding Corporation where they were held for one or two hours. [12, 18, 58, 62, 63] The arrest was made on the order of Mr. Peebles, vice-president of the Gulf Shipbuilding Corporation and manager of the Town of Chickasaw. He instructed the deputy sheriff to forcibly remove Jehovah's witnesses from the "business block" at any time they were found on the street or sidewalk. [12, 17, 19, 26, 54] Appellant, after released, was warned not to again distribute magazines on the sidewalk in front of the "business block" in Chickasaw. [12, 18, 58, 62, 63]

The arrest of appellant and the threat of future arrest if she continued such activity in the "business block" was based on a custom of the operators of Chickasaw, which was of many years standing, requiring peddlers, solicitors and hawkers to obtain prior permission before selling merchandise on the streets or sidewalks in front of the "business block". [47, 87] * The Gulf Shipbuilding Corporation continued to enforce this regulation after the property was acquired from the Tennessee Land Company. [48, 87] The corporation about two weeks before the arrests caused a notice to be posted in the windows of the stores fronting on the "business block" of Chickasaw. [14, 22, 47, 53] The notice reads:

* Compare undisputed evidence that newspapers were sold only with permits. [25, 30, 65]

NOTICE

This is private property, and without written permission, no street, or house vendor, agent or solicition or any kind will be permitted.

Gulf Shipbuilding Corporation
Housing Division

[13, 22, 41, 49, 53]

Appellant, on December 18, 1943, together with others of Jehovah's witnesses, again appeared on the sidewalks of the "business block" distributing the magazines in the manner above described. They were forthwith arrested and taken to the Mobile County Jail where they were incarcerated. However, after some discussion and further warnings appellant and her companion were released without charges being made. [12, 18, 58, 62, 63, 67]

A few days later Grace Marsh called at Manager Peebles' office for the purpose of straightening out their differences. [48, 58, 63] She explained that she and her companions were ordained ministers, Jehovah's witnesses, preaching the gospel of God's Kingdom. [58] Peebles was informed that Jehovah's witnesses were engaged in a charitable Christian work. She offered him sample copies of the magazines being distributed. Peebles was told that the faithful continuance of their preaching in this manner in Chickasaw meant to them everlasting life. He was advised that the law of the land guaranteed the right to distribute the literature upon the streets of Chickasaw. [48, 58, 63] The manager stated that, regardless of their understanding of the law, Jehovah's witnesses would have to obtain a permit to carry on such work, but that he was not willing to issue such a permit. [48, 58] Finally he specifically warned them again not to come upon the streets any more. [48]

On December 24, 1943, appellant and two of her companions appeared with their magazines on the sidewalk in front of the "business block". [12, 19, 31, 61, 62, 68] One

stood in the center of the block and each of the others stood at the ends of the block. [12, 14, 61, 63, 64] The company police officer again told them that they could not carry on their work without a permit. [12, 64] He called their attention to the notice posted in the shop windows. [14, 64, 66] Thereupon appellant informed him that "we were ordained ministers and that was the right granted to us by the Constitution; we were commanded by Almighty God to do this and we couldn't ask man for permits to do this work; we were not peddlers and we were not soliciting for anything, we were simply there carrying on our Christian educational work in an orderly manner." [14, 64, 68]

The officer then placed them under arrest, put them in his car and started toward the police station. However, he circled the block before going to the station. As he came back around he found that three others had taken the place on the street of those he had just arrested, so he stopped and took them into custody also. [14-15] The group was then taken to the Sheriff's office in Mobile where charges of "trespass after warning" were placed against them.

HOW ISSUES RAISED

In the Circuit Court appellant duly presented her motion to dismiss claiming that if the statute was applied to the facts and circumstances of the case that it would become unconstitutional because it would abridge her rights of freedom of speech, press and worship of Almighty God, contrary to the First and Fourteenth Amendments. [91] The motion was denied with exception to appellant. [91] In due time and manner the Court of Appeals of Alabama was requested to reverse the judgment of conviction, whereby appellant was committed, because of the aforesaid abridgment of her said constitutional rights. [141] The Court of Appeals of Alabama construed said contention by overruling it. [141-150] (See jurisdictional statement, pages 44-46) The error of said court was called to the attention of the court in a motion for rehearing duly filed, which motion was

denied. [150-152, 153] Appellant then timely filed a petition for writ of certiorari in the Supreme Court of Alabama praying that the writ issue and that the judgments be reviewed and reversed. [153-156] Appellant, by such petition, claimed that the statute as construed and applied deprived her of freedom of speech, press and worship, contrary to the First and Fourteenth Amendments to the United States Constitution. [153-156] The Supreme Court of Alabama, on March 29, 1945, denied certiorari. (21 S. 2d 564) [156]

Specifications of Error

1. The trial court erred in overruling appellant's motion to dismiss. [91]

2. The Court of Appeals of Alabama erred in overruling appellant's assignments of error and in affirming the judgment of the trial court. [141-150]

Points for Joint Argument

ONE

The law extends an implied invitation to Arthur Tucker in behalf of the residents of the Hondo Navigation Village permitting him to call from door to door, which cannot be revoked by the manager.

TWO

Grace Marsh has the right to use the sidewalk and street of the "business block" in Chickasaw, Alabama, for the purpose of distributing Bible literature regardless of the private ownership and title vested in the Gulf Shipbuilding Corporation.

THREE

By assuming to manage and operate the Town of Chickasaw, the Gulf Shipbuilding Corporation stands in relation to the people of Chickasaw as a quasi-municipal corporation, and is subject to the same constitutional restraints prohibiting abridgment of civil rights by an ordinary municipal corporation.

FOUR

The Bible literature distribution activities of Jehovah's witnesses in both cases are proper preaching and worship protected by the Constitution.

FIVE

The convictions of appellants, respectively under the Texas and Alabama statutes, because of their refusal to discontinue preaching gives criminal sanctions to the regulations of private persons owning the properties, thus abridging the appellants' rights of freedom of speech, press and worship contrary to the First and Fourteenth Amendments to the United States Constitution.

JOINT ARGUMENT

ONE

The law extends an implied invitation to Arthur Tucker in behalf of the residents of the Hondo Navigation Village permitting him to call from door to door, which cannot be revoked by the manager.

From time immemorial it has been customary for persons not expressly invited to go from door to door and summon residents to the door for the purpose of disseminating ideas on political, Biblical and other subjects or to invite them to attend meetings where such subjects are discussed. *Martin* v. *Struthers,* 319 U. S. 141. This method of dissemination of ideas has long been employed by religious organizations. *Martin* v. *Struthers,* 319 U. S. 141, at page 145. This court has said that "pamphlets have proved the most effective instruments in the dissemination of opinion. And perhaps the most effective way of bringing them to the notice of individuals is their distribution at the homes of the people." *Schneider* v. *State,* 308 U. S. 147, 164. In *Mount Sterling* v. *Donaldson Baking Co.,* 287 Ky. 781, 155 S. W. 2d 237, it was said that "where a householder does not exter-

nally manifest in some way his desire not to be molested by solicitors, the latter may take custom and usage as implying consent to call." See also *Prior* v. *White*, 132 Fla. 1, 180 S. 347, where it is said, "It has been held that a license may be implied to enter the house of another at usual and reasonable hours, and in a customary manner, for any of the common purposes of life." Accord *Lakin* v. *Ames*, 64 Mass. 198, 220, and cases there cited.*

The right extends not only to the popular cause but to the unpopular cause. It is not confined to visitations at only such homes that the caller has reason to believe he is welcome, but the law extends the right to every person to call at every home to ascertain whether the householder has an interest in the literature distributed. *Martin* v. *Struthers*, 319 U. S. 141, 145-148. The right does not authorize one to call at a home or insist on staying where he has been informed by the householder he is not wanted. The right to determine who shall visit residents of homes located in Hondo Navigation Village is confined to each individual householder. The landlord or its manager does not have the right to say who shall or who shall not visit the tenants.

The implied invitation to visit at the homes of the people is one unaffected by the fact that the homes are occupied by tenants rather than the owner. In renting property the landlord demises the uninterrupted use of the property to the tenant in the absence of an express agreement to the contrary. Thus it has been held that uninvited callers of

* Laws which arbitrarily punish one for calling from house to house without previous express invitation of the householder have uniformly been declared unconstitutional. *City of Orangeburg* v. *Farmer*, 181 S. C. 143, 186 S. E. 783; *City of Columbia* v. *Alexander*, 119 S. E. 241; *Real Silk Hosiery Mills* v. *City of Richmond, Calif.*, 298 F. 126; *Ex parte Maynard*, 275 S. W. 1071; *Jewel Tea Co.* v. *Town of Bel Air*, 172 Md. 536, 192 A. 417; *White* v. *Town of Culpeper*, 172 Va. 630, 1 S. E. 2d 269; *New Jersey Good Humor, Inc.* v. *Board of Comm'rs*, 11 A. 2d 113, 114; *City of McAlester* v. *Grand Union Tea Co.*, 98 P. 2d 924; *De Berry* v. *La Grange*, 62 Ga. App. 74, 8 S. E. 2d 147; *Jewel Tea Co.* v. *Geneva, Nebr.*, 291 N. W. 664; *Zimmermann* v. *London*, 38 F. Supp. 582.

tenants in an apartment house are not trespassers. *Duff* v. *Eickler*, 336 Mo. 1164, 82 S. W. 2d 881; *Fogarty* v. *Bogart*, 59 App. Div. 114, 116, 69 N. Y. S. 47; *Mitchell* v. *Georgia*, 12 Ga. App. 557, 77 S. E. 889.*

It has been said that a landlord impliedly grants to the tenant the rights of ingress and egress. Moreover, in an apartment the landlord cannot "object to the free use of the bell and knocker, halls, staircase or the passageways or any of the necessary adjuncts of his furnished apartments unless it be otherwise stipulated at the time of the taking of the apartments. . . . Not only is the lessor himself entitled to egress and ingress, but so are those who visit him. . . . The use of the apartments and dwellings necessitates the use of the passage by tradesmen in delivering goods, by persons having other business with the occupants, and by those who visit him for social purposes. . . ."

Nor has the landlord the right to select the visitors, or the tradesmen, or the tradesmen's servants, so long, at least, as they are decent in character and behavior. The tenant is at liberty to receive whom he pleases and engage any tradesmen or deal with any merchant at his pleasure." *Williams* v. *Lubbering*, 73 N. J. L. 317, 63 A. 90.

That the Hondo Navigation Village was a defense housing project does not change the rule. The mere fact that many residents of the Village engaged in night work and slept during the day does not give the manager of the Village the right to censor or prohibit Tucker's calling from door to door in the Village. In *Martin* v. *Struthers* (319 U. S. 141, 144) it was argued by the City of Struthers that because many of its residents were defense workers sleeping during the day it could prohibit "bell pushers" from calling at the homes of the people. This argument was held not to be substantial enough to justify the abridgment of the right

* See also *Goldstein* v. *Healy*, 187 Cal. 296, 201 P. 462, 464; *Williams* v. *Mayer*, 4 S. 2d 71, 72; *Montgomery* v. *Virginia*, 99 Va. 833, 37 S. E. 841; *Suggs* v. *Anderson*, 12 Ga. 461.

of freedom of speech, press and worship. (319 U. S. 141, 145, 147)

The action of the manager of the Village in invoking the Federal Public Housing Authority regulations against peddlers and solicitors calling from door to door without a permit was not a "reasonable standard of safety, convenience and health." (42 U. S. C. 1548, 54 Stat. 1128, 55 Stat. 363)

The regulation relied upon by the manager was referred to in the evidence. It was generally described. However, the specific provision of this regulation can be judicially noticed. *Bowles* v. *United States,* 319 U. S. 33, 35.

A reasonable construction and application of this regulation of the Federal Public Housing Authority promulgated pursuant to the Code (42 U. S. C. 1548) requires that it be construed so as to exclude therefrom the charitable preaching activity of Jehovah's witnesses. The courts have uniformly held that the activity of Jehovah's witnesses does not constitute peddling, hawking or soliciting.* A construction so as to exclude from the ambit of this regulation is made necessary by reason of 42 U. S. C. 1547 which provides, *inter alia,* "Notwithstanding any other provision of

* *New Hampshire* v. *Richardson,* 92 N. H. 178, 27 A. 2d 94; *New Hampshire* v. *Chouinard,* 92 N. H. 239, 29 A. 2d 120; *Semansky* v. *Stark,* 196 La. 307, 199 S. 129; *Shreveport* v. *Teague,* 200 La. 679, 8 S. 2d 640; *State* v. *Meredith,* 197 S. C. 351, 15 S. E. 2d 678; *State* v. *Mead,* 230 Iowa 1217, 300 N. W. 523; *Thomas* v. *City of Atlanta,* 59 Ga. App. 520, 1 S. E. 2d 598; *Cincinnati* v. *Mosier,* 61 Ohio App. 81, 22 N. E. 2d 418; *Commonwealth* v. *Akmakjian,* 316 Mass. 97, 55 N. E. 2d 6; *New York* v. *Barber,* 289 N. Y. 378, 46 N. E. 2d 329; *New York* v. *Gage,* 98 N. Y. S. 2d 817; *South Holland* v. *Stein,* 373 Ill. 472, 26 N. E. 2d 868; *State ex rel. Hough* v. *Woodruff,* 147 Fla. 299, 2 S. 2d 577; *Reid* v. *Brookville,* 39 F. Supp. 30; *Donley* v. *Colorado Springs,* 40 F. Supp. 15; *State ex rel. Wilson* v. *Russell,* 146 Fla. 539, 1 S. 2d 569; *State* v. *Greaves,* 112 Vt. 222, 22 A. 2d 497; *Blue Island* v. *Kozul,* 379 Ill. 511, 41 N. E. 2d 515; *Commonwealth* v. *Reid,* 144 Pa. S. C. 569, 20 A. 2d 841; *McConkey* v. *Fredericksburg,* 179 Va. 556, 19 S. E. 2d 682; *Ex parte Stevenson,* 145 Tex. Cr. R. 450, 169 S. W. 2d 175; *Seevers* v. *Somerset,* 295 Ky. 595, 175 S. W. 2d 18.

law, the acquisition by the Administrator of any real property pursuant to subchapters II-IV shall not . . . impair the civil rights under the State or local law of the inhabitants on such property." (54 Stat. 1128, 55 Stat. 363, 56 Stat. 212) * This section of the Code purports to protect the civil rights under state laws. A reasonable construction of the provision requires that the civil rights guaranteed by the Federal Constitution likewise cannot be curtailed.

This court is not bound by the conclusion of state courts that Jehovah's witnesses are engaged in peddling and hawking. *Murdock* v. *Commonwealth of Pennsylvania*, 319 U. S. 105, 111-112; *Follett* v. *Town of McCormick*, 321 U. S. 573, 576-577; *Hooven & Allison Co.* v. *Evatt*, 65 S. Ct. 870, 874; *Sterling* v. *Constantin*, 287 U. S. 378, 398.

It has been held that the refusal of one of Jehovah's witnesses, engaged in door-to-door calling upon tenants of an apartment house who has not specifically invited him, to leave the apartment house when ordered to do so by the landlord does not constitute trespass. *Massachusetts* v. *Richardson*, 313 Mass. 632, 48 N. E. 2d 678. Cf. *Minnesota* v. *Korich*, 17 N. W. 2d 497.** It has been held that one who uses the private way of leased premises, contrary to the wishes of a landlord claiming control over the way, is not guilty of trespass. *Pennsylvania* v. *Burford*, 38 Pa. Super. 201, 207; see also *Alabama Fuel & Iron Co.* v. *Courson*, 212 Ala. 573, 103 S. 667.

* This section of the Code has been resorted to for the purpose of invalidating local regulations prohibiting residents on such projects from exercising their right of suffrage. *Johnson* v. *Morrill* (Calif.) 126 P. 2d 873; *State ex rel. Parker* v. *Corcoran* (Kans.) 128 P. 2d 999.

** In this case it was held that similar conduct did not constitute disorderly conduct and breach of the peace within the meaning of the ordinance of the City of Minneapolis.

TWO

Grace Marsh has the right to use the sidewalk and street of the "business block" in Chickasaw, Alabama, for the purpose of distributing Bible literature regardless of the private ownership and title vested in the Gulf Shipbuilding Corporation.

Chickasaw is a thriving little village. It has grown up to become one of the suburbs of the City of Mobile. The small "business block" is the center of all business activity in the town. The record reveals that the road and sidewalk used by appellant have been laid out and used in the present form by the general public for a period of more than 23 years. [50-51, 82, 90]

The Court of Appeals of Alabama has impliedly held that there was no dedication of the street so as to constitute it a public street withdrawing the control of the same from the Gulf Shipbuilding Corporation. This is a question the decision of which rests finally with the state courts as far as the law of dedication and acceptance by user is concerned.* However, the right to use the streets of a town for the purpose of disseminating information and opinion does not depend on a technical dedication and formal acceptance by the public expressly or impliedly. Therefore the finality of these decisions in no way limits the rights of appellant before this court. The payment of taxes by the owner does not diminish the rights of the public to use the streets for these purposes as long as they are open and used as avenues of travel. In towns operated by municipal corporations under the common law the title to the streets

* However, it should be observed that the holding of the courts below in the circumstances of this case is in conflict with other decisions of the Alabama courts. Cf. *Beverly* v. *State*, 28 Ala. App. 451, 452, 185 S. 768; *Locklin* v. *Tucker*, 208 Ala. 155, 93 S. 896; *Still* v. *Lovelady*, 218 Ala. 19, 20, 117 S. 481; *Ft. Payne Co.* v. *Ft. Payne*, 216 Ala. 679, 114 S. 63; *Trammell* v. *Bradford*, 198 Ala. 513, 73 S. 894, 895, 896; *Leeds* v. *Sharp*, 218 Ala. 403, 404, 118 S. 572.

and sidewalks vested in the abutting owners with the boundary running down the middle of the street. *Cloverdale Homes* v. *Cloverdale*, 182 Ala. 419, 62 S. 712; *McCranery* v. *City of Leeds*, 239 Ala. 143, 194 S. 151; *Thorndike* v. *Milwaukee Auditorium Co.*, 143 Wis. 1, 126 N. W. 881, 886. Cf. *Birmingham Mineral R. Co.* v. *Bessemer*, 98 Ala. 274, 13 S. 487.

The Gulf Shipbuilding Corporation has not built a wall around the town. It is not a town surrounded by a moat to keep out an enemy. It does not maintain a closed gate at the entrance to the town. From all outward appearances it is the same as any other small suburb of Mobile. Its streets and sidewalks are used in the same manner and for the same purposes as are the streets and sidewalks of other towns. Thus all, including strangers, are welcome to use these facilities as in any other town.

The "business block" of Chickasaw is connected with the public highway. In fact the short crescent-like road that connects the street where the "business block" is located is a mere "drive-in" from the public highway. Travelers proceeding along the public highway are impliedly invited to enter the "business block" and shop as in any other shopping district. Under the facts and circumstances the public have a public easement to enter upon the street and to walk upon the sidewalk for all legitimate purposes.

Certainly a traveler or one desiring to use the thoroughfare and arteries for proper and lawful purposes does not surrender any of his rights by turning off the public highway a few feet and entering the street in front of the "business block" of Chickasaw. In fact, the deputy sheriff testified it would be impossible for one not intimately familiar with the community to tell when he entered upon private property. [25] The Gulf Shipbuilding Corporation cannot be heard to say the public does not have any rights upon the street and sidewalk in front of the "business block". Indeed it is estopped to deny the easement for use of the street and sidewalk by the public for ordinary purposes.

"A traveler on a highway, open for the purpose, has no occasion to inquire over whose land the road lies, nor to give notice of his claim of right to use it. The continuous user by the public carries notice of its nature." *Still* v. *Lovelady*, 218 Ala. 19, 20, 117 S. 481.

"Wherever the title of streets and parks may rest, they have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions. Such use of the streets and public places has, from ancient times, been a part of the privileges, immunities, rights and liberties of citizens." *Hague* v. *C. I. O.*, 307 U.S. 496.

In *Jamison* v. *Texas*, 318 U. S. 413, the City of Dallas argued that because under the law of Texas ownership of the streets by the municipality conferred absolute power to regulate their use, it was justified in prohibiting the distribution of handbills by Jehovah's witnesses on its streets. Accordingly it relied on *Davis* v. *Massachusetts*, 167 U. S. 43, referred to by Mr. Justice Roberts in his opinion in the *Hague* case. The decision in the *Jamison* case specifically declared that the rule in the *Davis* case was no longer the law. It was held that the ownership and the concomitant right to control of the streets under Texas law did not prevent conviction from being void and unconstitutional.

It seems that the proviso in the warranty section of the deed from the Chickasaw Development Company to the Gulf Shipbuilding Corporation whereby the warranties were exempted from the "streets, alleys or public roads" [42] indicate that title and ownership of the entire property including the streets would not confer the absolute right in their use and control to the exclusion of all other persons.

This case is analogous to *State* v. *Vincioni*, 30 N. M. 472, 480, 239 P. 281. There a peddler was convicted of trespass because of his disregard of orders to stay off of company-owned streets in a town privately owned by a company. The court said:

"In this case the owner has seen fit to build a town upon [the property] and lay out streets therein, and to lease the houses therein, upon terms implying the right of the tenants to the use of the streets, without incorporating in the contract any restriction upon such use. So doing, it has waived, or rather contracted away, the right to prohibit ordinary use of the streets by its tenants. One who is on the streets at the invitation and upon such business of the tenant as does not conflict with the restrictions of the lease is there under contract and not in violation of the statute."

There is always an invitation or license implied in the law for any person to speak to another on a matter of mutual interest. Thus, Jehovah's witnesses have an implied invitation or license to speak with the public upon the streets, sidewalks, parks, and other public places, concerning matters of public interest.

It was clearly established that appellant entered the premises with no idea of selfishly (i.e., privately) conveniencing herself or for the purpose of exploration or adventure. On the contrary, she sought *others'* welfare; her sole object was to 'comfort those who mourn' because of the abominations and great sorrow that now afflict the peoples of earth. (Isaiah 61:1-3; 2 Corinthians 1:4; Ezekiel 9:4) Therefore she was an invitee and licensee upon the sidewalks and streets of Chickasaw.

THREE

By assuming to manage and operate the Town of Chickasaw, the Gulf Shipbuilding Corporation stands in relation to the people of Chickasaw as a quasi-municipal corporation, and is subject to the same constitutional restraints prohibiting abridgment of civil rights by an ordinary municipal corporation.

The Town of Chickasaw cannot be said not to be a town. Even though it is not a municipal corporation, it is nevertheless a town as properly defined in the law. Although unincorporated it possesses the attributes of a public corporation. *Bloomfield* v. *Charter Oaks National Bank,* 121 U. S. 121; *Williams* v. *Eggleston,* 170 U. S. 304. It should be remembered that the Town of Chickasaw has a sewer and water system. It provides the inhabitants with police protection, etc. In this respect the town assumes to perform the functions ordinarily performed by a municipal corporation. All these municipal functions are done in the name of and by the authority of the Gulf Shipbuilding Corporation. The Town of Chickasaw is not a *de facto* municipal corporation. It does not possess the necessary requisites. *Coupe* v. *Valley Head,* 212 Ala. 125, 101 S. 874. Nevertheless the town is operated by the private corporation as a quasi-municipal corporation: *Ex parte Selma etc. R. Co.,* 45 Ala. 969, 6 Am. S. R. 722. Cf. *Yielding* v. *State,* 232 Ala. 292. 167 S. 580.

Under the authorities, since the Gulf Shipbuilding Corporation has undertaken to exercise functions that convert the Town of Chickasaw into a quasi-municipal corporation, it cannot be said that it is emancipated from all the usual restraints against abridgment of civil liberties placed upon ordinary municipal corporations. Regardless of who owns the streets, ordinarily used by the public for usual public purposes, the rights of the public to carry on activity protected by the First and Fourteenth Amendments cannot be abridged. *Jamison* v. *Texas,* 318 U. S. 413.

Whenever private property is used in such a manner as to be affected with a public interest, as is the street in this "business block" of the Town of Chickasaw, it ceases to be governed by the law relative to private property.

"When, therefore, one devotes his property to a use in which the public has an interest, he, in effect, grants to the public an interest in that use, and must submit to be controlled by the public for the common good, to the extent of the interest he has thus created." *Munn* v. *Illinois*, 94 U. S. 113, 125-126.*

This court in announcing the foregoing principle relied upon a decision by the Supreme Court of Alabama, saying, "The Supreme Court of Alabama . . . was called upon, in 1841, to decide whether the power granted to the City of Mobile to regulate the weight and price of bread was unconstitutional, and it was contended that 'it would interfere with the right of the citizen to pursue his lawful trade or calling in the mode his judgment might dictate'; but the court said, 'there is no motive . . . for this interference on the part of the legislature with the lawful action of individuals, or the mode in which private property shall be enjoyed, unless such calling affects the public interests, or private property is employed in a manner which directly affects the body of the people. Upon this principle in this State, tavern keepers are licensed; . . . and the County Court is required, at least once a year, to settle the rates of innkeepers. Upon the same principle is founded the control which the legislature has always exercised in the establishment and regulation of mills, ferries, bridges, turnpike

* The doctrine stated in the *Munn* case was approved and restated in other decisions by the court. *Stone* v. *Wisconsin*, 94 U. S. 181, 185-186; *Adkins* v. *Children's Hospital*, 261 U. S. 525, 546; *Board of Trade of the City of Chicago et al.* v. *Olsen, United States Attorney*, 262 U. S. 1, 41. In the Chicago Board of Trade case it was said: " . . . we find no difficulty under *Munn* v. *Illinois*, 94 U. S. 113, 133, and *Stafford* v. *Wallace*, supra [285 U. S. 495] in concluding that the Chicago Board of Trade is engaged in a business affected with a public national interest and is subject to national regulation as such."

road, and other kindred subjects.' *Mobile* v. *Yuille*, 3 Ala. N. S. 140." *Munn* v. *Illinois*, 94 U. S. 113, 129.

It is submitted that even though the court may conclude that this is not a public street in the same way that a public street owned by a municipal corporation is, or that there is no public easement, it must be concluded that the property is used in such a manner as to create a public interest therein. This use is sufficient to permit the public to invoke the restraints of the First and Fourteenth Amendments to protect the exercise of their rights upon the public streets of Chickasaw. The Gulf Shipbuilding Corporation has received the benefits of operating a town and maintaining a public street in the "business block". It should be bound by law to share the detriments of the operation of a quasi-municipal corporation or property affected with a public interest.

FOUR

The Bible literature distribution activities of Jehovah's witnesses in both cases are proper preaching and worship protected by the Constitution.

That Jehovah's witnesses are engaged in preaching activity from house to house and upon the streets and, in the exercise of this activity are entitled to the protection of the First and Fourteenth Amendments guaranteeing freedom of worship, is no longer open to doubt or subject to debate. In a long line of decisions this court has consistently vindicated the rights of Jehovah's witnesses to engage in these activities.*

For additional argument as to why Jehovah's witnesses are properly engaged in preaching the gospel, see brief for

* *Lovell* v. *Griffin*, 303 U. S. 444; *Schneider* v. *State*, 308 U. S. 147; *Cantwell* v. *Connecticut*, 310 U. S. 296; *Jamison* v. *Texas*, 318 U. S. 413; *Largent* v. *Texas*, 318 U. S. 418; *Taylor, Benoit and Cummings* [3 cases] v. *Mississippi*, 319 U. S. 583; *Jones* v. *Opelika*, 319 U. S. 103, reversing 316 U. S. 584; *Murdock* v. *Commonwealth of Pennsylvania*, 319 U. S. 105; *Martin* v. *City of Struthers*, 319 U. S. 141; *Follett* v. *Town of McCormick*, 321 U. S. 573.

petitioners, *Murdock* v. *Commonwealth of Pennsylvania*, Nos. 480-487, October Term 1942, pp. 22 to 30; brief for appellant, *Cummings* v. *State of Mississippi*, No. 828, October Term 1942, pp. 34 to 44; and joint brief for petitioners, *Smith* v. *United States*, No. 66, October Term 1945, *Estep* v. *United States*, No. 292, October Term 1945, pp. 143 to 153.

Mr. Justice Murphy, in *Martin* v. *Struthers* (319 U. S. 141, at pp. 149-150) said: "Nothing enjoys a higher estate in our society than the right given by the First and Fourteenth Amendments freely to practice and proclaim one's religious convictions. Cf. *Jones* v. *Opelika*, 316 U. S. 584 at 621. The right extends to the aggressive and disputatious as well as to the meek and acquiescent. . . . Freedom of religion has a higher dignity under the Constitution than municipal or personal convenience. In these days free men have no loftier responsibility than the preservation of that freedom. A nation dedicated to that ideal will not suffer but will prosper in its observance."

FIVE

The convictions of appellants, respectively under the Texas and Alabama statutes, because of their refusal to discontinue preaching gives criminal sanctions to the regulations of private persons owning the properties, thus abridging the appellants' rights of freedom of speech, press and worship contrary to the First and Fourteenth Amendments to the United States Constitution.

Inasmuch as the undisputed evidence shows that appellants were engaged in activity protected against abridgment by the First and Fourteenth Amendments there is a presumption that the statutes as construed and applied are unconstitutional. There is no evidence that the appellants were abusing their rights in the exercise of these protected activities. They were not truculent. They were not

abusive or insulting. There is no evidence that Arthur Tucker refused to leave the premises of any householder in the Hondo Navigation Village. Indeed he testified that he had not refused to leave promptly when informed by any householder that he was not interested. Grace Marsh did not block the street or sidewalk. She did not interfere with pedestrian traffic. She did not litter the streets. No breach of the peace or other impropriety was committed by her. She was quietly and orderly preaching the gospel without interference to any person when she was arrested.

On this state of the record it cannot be presumed that circumstances existed warranting the interference with the exercise of this constitutionally protected activity. The burden of proof was upon the state in each instance to prove that grounds existed for justifying the abridgment of the exercise of these activities. In *Busey* v. *District of Columbia*, 78 App. D. C. 189, 138 F. 2d 592, the court said: "Freedom of speech, press, and religion are entitled to a preferred constitutional position because they are 'of the very essence of a scheme of ordered liberty.' (*Palko* v. *Connecticut*, 302 U. S. 319, 325) . . .

"We think we may now hold that when legislation appears on its face to affect the use of speech, press, or religion, and when its validity depends upon the existence of facts which are not proved, their existence should not be presumed; at least when their existence is hardly more probable than improbable, and particularly when proof concerning them is more readily available to the government than to the citizen. The burden of proof in such a case should be upon those who deny that these freedoms are invaded. . . . No presumption which lacks a probable basis in fact should be permitted to conceal an interference with essential freedoms."*

* "The presumption of validity which attaches in general to legislative acts is frankly reversed in the case of interferences with free speech, free press and free assembly, and for a perfectly cogent reason." *The Struggle for Judicial Supremacy*, Robert H. Jackson, (Knopf, New York, 1941) p. 285.

This court has said: "There may be narrower scope for operation of the presumption of constitutionality when legislation appears on its face to be within a specific prohibition of the Constitution, such as those of the first ten amendments, which are deemed equally specific when held to be embraced within the Fourteenth. See *Stromberg* v. *California*, 283 U.S. 359, 369-370; *Lovell* v. *Griffin*, 303 U.S. 444, 452."—*United States* v. *Carolene Products Co.*, 304 U.S. 144, 152. Cf. *West Virginia State Board of Education* v. *Barnette*, 319 U. S. 624, 638-640.

The undisputed evidence shows that there was *no clear and present danger* that any interest of the state or any right of private property was threatened with invasion or injury by reason of the activity of appellants. In the absence of a showing of clear and present danger of substantial evils to the community in a case where the activity is protected, as here, by the First and Fourteenth Amendments, the convictions cannot be sustained *Bridges* v. *California*, 314 U. S. 252, 262-263, 273.

The mere inconvenience of the pedestrians using the sidewalk where Grace Marsh was standing or the inconvenience of householder having to answer the knock of Arthur Tucker is not sufficient justification for the application of the statute against appellants.

"Mere legislative preferences for one rather than another means for combatting substantive evils, therefore, may well prove an inadequate foundation on which to rest regulations which are aimed at or in their operation diminish the effective exercise of rights so necessary to the maintenance of democratic institutions. It is imperative that, when the effective exercise of these rights is claimed to be abridged, the courts should 'weigh the circumstances' and 'appraise the substantiality of the reasons advanced' in support of the challenged regulations."—*Thornhill* v. *Alabama*, 310 U. S. 88. See also *Schneider* v. *State*, 308 U. S. 147, 160.

A permit is required by the Gulf Shipbuilding Corporation authorities as a condition precedent to the exercise of preaching activity of Jehovah's witnesses upon the streets of Chickasaw. A permit must be obtained from the manager of the Hondo Navigation Village pursuant to the regulation of the Federal Public Housing Authority in order to carry on house-to-house preaching activity. In both cases the managers defiantly stated that they would not grant a permit for Jehovah's witnesses to carry on their ministerial activity. The requirement of the permit as a condition precedent to the exercise of these activities is unlawful censorship contrary to the First and Fourteenth Amendments to the United States Constitution. * The use of the regulations by both managers amounts to an outright prohibition of the activity of Jehovah's witnesses. Laws prohibiting the exercise of this activity are unconstitutional. *Jamison* v. *Texas*, 318 U. S. 413. "Ordinances absolutely prohibiting the exercise of the right to disseminate information are, *a fortiori*, invalid." (*Jones* v. *Opelika*, 316 U. S. 584, 595-596.) **

The ownership and title to streets open to public use does not give the owner the right to abridge the exercise of constitutional rights thereon by other persons without the consent of the owner. Title and ownership is not the criterion. The guide in determining whether the streets can be used for these purposes is whether the streets are actually open and used by the public in the same way that other streets are used. Unless the city is walled in and the streets blocked by gates, there is nothing to warn a person that the streets of Chickasaw are not the same as the

* *Lovell* v. *Griffin*, 303 U. S. 444; *Schneider* v. *State*, 308 U. S. 147; *Cantwell* v. *Connecticut*, 310 U. S. 296; *Largent* v. *Texas*, 318 U. S. 418.

** *Hague* v. *C. I. O.*, 307 U. S. 496, 501, 518; *Schneider* v. *State*, 308 U. S. 147, 162; cf. *Ex parte Walrod*, 73 Okla. Cr. 299, 120 P. 2d 783; *Ex parte Winnett*, 73 Okla. Cr. 332, 121 P. 2d 312; *Commonwealth* v. *Anderson*, 308 Mass. 370, 32 N. E. 2d 684; *Thornhill* v. *Alabama*, 310 U. S. 88; *Carlson* v. *California*, 310 U. S. 106; *Near* v. *Minnesota*, 283 U. S. 697; *Zimmermann* v. *London*, 38 F. Supp. 582.

streets of any other community.

The fact that one may be a land owner occupying the status of a landlord does not constitute him a dictator. A landlord does not have control over the mind and conscience of the tenant occupying his property purely because he is the landlord. All citizens are equal before the law. No qualification of property can be imposed as a condition precedent to the exercise of constitutional rights. Although poor and needy, a tenant need not attorn to a landlord his constitutional rights and liberties solely because he is obligated to pay rent and does not hold the title to the property wherein he dwells.

The ownership and title to the streets is entirely immaterial. Even in the towns where the operation of the local government is in the hands of a municipal corporation, in the absence of a change by statute, the common law vested title to the sidewalks and streets in the abutting owners. *Cloverdale Homes* v. *Cloverdale*, 182 Ala. 419, 62 S. 712.

If private ownership and title to the streets and sidewalks conferred the right to regulate and censor activities guaranteed by the Constitution, as argued by the State of Alabama in this case, then such activities could be prohibited in towns operated by public municipal corporations where title to streets is in the abutting owners. In such situations the abutting owner would have the prerogative to prosecute one for trespass who defiantly used sidewalks contrary to the wishes of the owner. Thus there would be accomplished indirectly what the Constitution and this Court have said cannot be done directly. It should be remembered that the "Constitution deals with substance, not shadows. Its inhibition was levelled at the thing, not the name."—*Cummings* v. *Missouri*, 4 Wall. 277.

The Gulf Shipbuilding Corporation has no higher right and no higher control over the streets and sidewalks because it holds title thereto than do abutting owners to

streets in any other community. Even where by statute the title to the streets has been vested in a municipality and under the law of the state the municipality has absolute control over the streets, it has been held that constitutional rights cannot be impaired. *Jamison* v. *Texas*, 318 U. S. 413.

The rights of the public to the use of the streets cannot be ignored because of the right to regulate and control them. *City of Birmingham* v. *Hood-McPherson Realty Co.*, 233 Ala. 352, 172 S. 114.

The power to regulate the streets does not confer a license to abridge the rights of the public. Landlords have no greater right to order Jehovah's witnesses off the sidewalks and streets or the property rented to tenants than would they have to extrude customers of stores abutting the sidewalks and streets of the tenants using rented premises.

The argument that rights of private property ownership and title thereto giving absolute control so as to abridge the exercise of rights guaranteed by law has been rejected by this court. In *Thornhill* v. *Alabama*, 310 U. S. 88, the anti-picketing statute of Alabama was declared to be invalid both on its face and as construed and applied. The court found that the unwelcome pickets were operating on "'a private entrance for employees, and not on any public road.' One witness explained that practically all of the employees live on Company property and get their mail from a post office on Company property."

The state, in that case, made much ado about the fact that the pickets were on private property. Because of their refusal to leave private property it was contended that they were properly convicted under the anti-picketing statute. The court, in setting aside the conviction, observed in a footnote on the last page of the opinion in the *Thornhill* case that this contention was "without significance."

In *Republic Aviation Corp.* v. *National Labor Relations Board*, and *National Labor Relations Board* v. *Le Tourneau*

Co. of Georgia, 65 S. Ct. 982, 986, the Aviation Corporation had a regulation prohibiting solicitation and the Le Tourneau Company had a regulation prohibiting distribution of literature without permission from the company. In each case employees exercising their rights under the National Labor Relations Act were discharged because of their distribution of literature pertaining to labor relations between the company and employees on company-owned property, contrary to the regulations. The court in affirming the orders of the National Labor Relations Board sustaining the rights of the employees to distribute the literature on the premises of the employer attributed no significance to the fact that it was privately owned property. Indeed, it was inferred that the activity could have been carried on away from the company property as effectively as was done upon the property. The court indicated that if it was a company-owned town where the employees lived, as well as worked, the rights to distribute the literature upon the property of the employer would have been stronger. There the court said: "Neither of these is like a mining or lumber camp where the employees pass their rest as well as their work time on the employer's premises, so that union organization must proceed upon the employer's premises or be seriously handicapped."

Rights of employees under the National Labor Relations Act are sufficient to justify an overruling of the rights of private property of the employer in efforts to prohibit the distribution of literature. *A fortiori*, the strong and preferred rights of the citizen secured by the First and Fourteenth Amendments are likewise sufficiently strong to overcome any rights of property in the circumstances detailed in the cases at bar. If private property was of no significance in the above cited cases, then by force of the same reason the ownership and title to the properties in question are immaterial.

For many years in this country some communities have

been owned by one single enterprise. Every house and place of business in such places is usually rented from the central enterprise operating the town. Usually a gigantic mining or industrial concern is so situated that the housing facilities are inadequate. Such industries, in order to relieve the housing shortage and to facilitate a ready force of laborers, house their laborers in company-owned houses. Frequently these company-owned communities are quite large. Throughout many parts of the United States there are scores of mining towns. Many are privately owned towns under control and supervision of mining companies.

In this postwar era there is a growing tendency of gigantic private corporations and governmental agencies to buy up large sections of property, within or without a city, for redevelopment. On such properties they erect whole communities and towns. The properties are not sold. In such communities all store space and homes are rented to the tenants. *

If the position of the appellees in these cases be sustained, that private property confers the right to censor and prohibit the exercise of civil rights thereon, then a formidable weapon designed to defeat the very purpose of the Constitution has been forged. There is no end to which that engine can drag the people were it approved by this court. The danger to liberty inherent in such a doctrine

* One of the most outstanding developments of this character is that of the Metropolitan Life Insurance Company, known as "Parkchester", Bronx County, in the City of New York. This large city within a city houses over forty thousand persons. It has its own police force, etc. See *The Architectural Forum*, December 1939. Similar large developments are planned in many places throughout the United States. See *American Builder*, June 1945, p. 94 ("Grandyle Village", near Buffalo, N. Y.); *Architectural Forum*, May 1945, p. 28, and *Business Week*, April 21, 1945, p. 106 ("Maplewood" near Lake Charles, Louisiana); *American Builder*, March 1945, pp. 84-85 ("San Lorenzo Village"); *The American City*, August 1945, p. 83. Consider the community located at Oak Ridge, Tennessee, whose inhabitants were engaged in manufacturing a vital part of the atomic bomb; *Architectural Record*, September 1945, p. 10; also, "Concord Village" housing project for Brooklyn, N. Y., sponsored by a group of banks, The New York *Times*, July 25, 1945.

becomes more apparent when it is considered that there is a growing tendency for such large private concerns to own, operate and control towns and communities. If ownership of property is the criterion by which the right to censor and prohibit the exercise of freedom of speech, press and worship of ALMIGHTY GOD is allowed, then there is a probability that large portions of a state or city could be bought up by a private concern and thus the Bill of Rights defeated within those areas.

Portions of the United States cannot be withdrawn from the reach of the Constitution by reason of private acquisition of communities. It is submitted that the constitutional liberties of the citizens do not depend for their subsistence upon any such tenuous basis.

In order to make the Constitution more than a shadow, and that it might be a living support to which the people can cling, this doctrine should be nipped in the bud.

Conclusion

Wherefore appellants pray that the judgment of each of the respective courts below be reversed and the appellants ordered discharged pursuant to the judgment to be entered herein.

Respectfully submitted,

A. R. TUCKER,
GRACE MARSH,
Appellants

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SUPREME COURT OF THE UNITED STATES.

No. 87.—October Term, 1945.

A. R. Tucker, Appellant. vs. The State of Texas. } On Appeal from the County Court of Medina County, Texas.

[January 7, 1946.]

Mr. Justice Black delivered the opinion of the Court.

The appellant was charged in the Justice Court of Medina County, Texas, with violating Article 479, Chap. 3 of the Texas Penal Code which makes it an offense for any "peddler or hawker of goods or merchandise" wilfully to refuse to leave premises after having been notified to do so by the owner or possessor thereof. The appellant urged in his defense that he was not a peddler or hawker of merchandise, but a minister of the gospel engaged in the distribution of religious literature to willing recipients. He contended that to construe the Texas statute as applicable to his activities would, to that extent, bring it into conflict with the Constitutional guarantees of freedom of press and religion. His contention was rejected and he was convicted. On appeal to the Medina County Court, his Constitutional contention was again overruled. Since he could not appeal to a higher state court this appeal under Sec. 237(a) of the Judicial Code, 28 U. S. C. 344(a) is properly before us. *Largent* v. *Texas*, 318 U. S. 418.

The facts shown by the record need be but briefly stated. Appellant is an ordained minister of the group known as Jehovah's Witnesses. In accordance with the practices of this group he calls on people from door to door, presents his religious views to those willing to listen, and distributes religious literature to those willing to receive it. In the course of his work, he went to the Hondo Navigation Village located in Medina County, Texas. The village is owned by the United States under a Congressional program which was designed to provide housing for persons engaged in National Defense activities. 42 U. S. C., §§ 1521-1553. According to all indications the village was freely accessible and open to the public and had the characteristics of a typical American

town. The Federal Public Housing Authority had placed the buildings in charge of a manager whose duty it was to rent the houses, collect the rents, and generally to supervise operations, subject to over-all control by the Authority. He ordered appellant to discontinue all religious activities in the village. Appellant refused. Later the manager ordered appellant to leave the village. Insisting that the manager had no right to suppress religious activities, appellant declined to leave, and his arrest followed. At the trial the manager testified that the controlling Federal agency had given him full authority to regulate the conduct of those living in the village, and that he did not allow preaching by ministers of any denomination without a permit issued by him in his discretion. He thought this broad authority was entrusted to him, at least in part, by a regulation, which the Authority's Washington office had allegedly promulgated. He testified that this regulation provided that no peddlers or hawkers could come into or remain in the village without getting permission from the manager.[1] Since the Texas Court has deemed this evidence of authority of the manager to suppress appellant's activities sufficient to support a conviction under the State statute, we accept their holding in this respect for the purposes of this appeal.

The foregoing statement of facts shows their close similarity to the facts which led us this day to decide in *Marsh* v. *Alabama*, No. 114, that managers of a company-owned town could not bar all distribution of religious literature within the town, or condition distribution upon a permit issued at the discretion of its management. The only difference between this case and *Marsh* v. *Alabama* is that here instead of a private corporation, the Federal Government owns and operates the village. This difference does not affect the result. Certainly neither Congress nor Federal agencies acting pursuant to Congressional authorization may abridge the freedom of press and religion safeguarded by the First Amendment. True, under certain circumstances it might be proper for security reasons to isolate the inhabitants of a settlement, such as Hondo Village, which houses workers engaged in producing war materials. But no such necessity and no such intention on the part of Congress or the Public Housing Authority are shown here.

[1] The available Regulations of the Authority, of which we can take judicial notice, Bowles v. United States, 319 U. S. 33, 35, do not show a regulation of this kind.

It follows from what we have said that to the extent that the Texas statute was held to authorize appellant's punishment for refusing to refrain from religious activities in Hondo Village it is an invalid abridgement of the freedom of press and religion.

We think it only proper to add that neither the Housing Act passed by Congress nor the Housing Authority Regulations contain language indicating a purpose to bar freedom of press and religion within villages such as the one here involved. The case is reversed and the cause remanded for further proceedings not inconsistent with this opinion.

Reversed and remanded.

Mr. Justice JACKSON took no part in the consideration or decision of this case.

Mr. Justice FRANKFURTER, concurring.

It will be time enough to consider the constitutionality of an Act of Congress that is claimed to be in defiance of the First Amendment when such legislation by Congress confronts us with the problem. The present case does not present such a situation. Subject to this reservation, I agree with the opinion of the Court for the reasons briefly stated in *Marsh* v. *Alabama*, decided this day. In the case of communities established under the sponsorship of the United States by virtue of its spending power, it would, I should think, be even less desirable than in the case of company towns to make the constitutional freedoms of religion and speech turn on gossamer distinctions about the extent to which land has been "dedicated" to public uses.

The CHIEF JUSTICE, Mr. Justice REED and Mr. Justice BURTON, dissenting.

The CHIEF JUSTICE, Mr. Justice REED and Mr. Justice BURTON construe the record in this case as showing a conviction for refusing, at the request of its authorized agent, to leave premises which are owned by the United States and which have not been shown to be dedicated to general use by the public. We, therefore, would affirm the conviction for the reasons given in the dissent in Number 114, *Marsh* v. *Alabama*, decided this day.